

RECORDATION NO. 8381 Filed & Recorded

JUN 24 1976 - 10 55 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT
Dated as of April 1, 1976

Among

GENERAL ELECTRIC COMPANY

and

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

as Manufacturers

and

TRUST COMPANY FOR USL, INC.,
as Trustee under MoPac Trust No. 3
as Vendee

(MoPac Trust No. 3)

TABLE OF CONTENTS

<u>SECTION</u>	<u>HEADING</u>	<u>PAGE</u>
Parties-----		1
1.	Construction and Sale -----	1
2.	Delivery -----	2
3.	Purchase Price and Payment -----	3
4.	Title to the Equipment -----	8
5.	Marking of Equipment -----	9
6.	Casualty Occurrences -----	9
7.	Inspections -----	11
8.	Possession and Use -----	11
9.	Prohibition Against Liens -----	11
10.	Indemnities -----	11
11.	Patent Indemnities -----	13
12.	Assignments -----	14
13.	Limitation of Vendee's Obligations -----	16
14.	Application of Provisions of Section 15, "Defaults", and Section 16, "Remedies" -----	18
15.	Defaults -----	18
16.	Remedies -----	20
17.	Applicable State Laws -----	24
18.	Extension Not a Waiver -----	24
19.	Recording -----	24

<u>SECTION</u>	<u>HEADING</u>	<u>PAGE</u>
20.	Notice -----	25
21.	Headings -----	26
22.	Effect and Modification of Agreements -----	26
23.	Law Governing -----	26
24.	Definitions -----	26
25.	Assignment Over and Grant of Security Interest in the Lease -----	27
26.	Execution -----	29

Attachments to Conditional Sale Agreement

Schedules A, B and C - Descriptions of Equipment
Schedule D - Series C Amortization Schedule

CONDITIONAL SALE AGREEMENT dated as of April 1, 1976 (this "Agreement") among GENERAL ELECTRIC COMPANY, a New York corporation ("General Electric"), GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a Delaware corporation ("General Motors") (General Electric and General Motors being herein sometimes collectively referred to as the "Manufacturers" and individually as the "Manufacturer") and TRUST COMPANY FOR USL, INC., as Trustee under MoPac Trust No. 3 (the "Vendee") pursuant to the Trust Agreement dated as of April 1, 1976 (the "Trust Agreement") among the Trustee, UNITED STATES LEASING INTERNATIONAL, INC., a California corporation, as agent for the Trustee (the "Agent"), and AMERICAN ROAD EQUITY CORPORATION, a Delaware corporation (the "Trustor").

WHEREAS, the Manufacturers are each willing to construct, sell and deliver to the Vendee, and the Vendee is willing to purchase, the respective items of railroad equipment to be built by such Manufacturers as described in Schedules A, B and C attached hereto (collectively the "Items of Equipment" or "Equipment" and individually an "Item" or "Item of Equipment"); and

WHEREAS, the Vendee is executing a lease dated as of the date hereof in respect of the Equipment with Missouri Pacific Railroad Company, a Missouri corporation (the "Lessee"), substantially in the form attached as Exhibit B to the Trust Agreement (the "Lease"); and

WHEREAS, the Manufacturers and the Vendee contemplate that the rights, security title and interest of each Manufacturer in and to the Equipment and certain rights and interests of each Manufacturer in and to this Agreement will be assigned to Wells Fargo Bank, N.A. (the "Assignee") pursuant to an Agreement and Assignment dated as of the date hereof (the "Assignment") among the Manufacturers and the Assignee;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

SECTION 1. CONSTRUCTION AND SALE.

Each of the Manufacturers will construct, sell and deliver to the Vendee, and the Vendee will purchase from each Manufacturer and accept delivery of and pay for as hereinafter provided, those Items of Equipment which are indicated on Schedules A, B and C attached hereto to be constructed and sold by such Manufacturer, each Item of which shall be constructed in accordance with the applicable specifications referred to in said Schedules A, B and C with such modifications thereof as may be agreed upon in writing by the Vendee, the Lessee and the respective Manufacturer (which

specifications and modifications, if any, are hereinafter called the "Specifications"). The design and quality of equipment and material in such Items shall conform to all Department of Transportation requirements and specifications for new equipment, and to all standards recommended by the Association of American Railroads, interpreted as being applicable to new railroad equipment of the character of such Items as of the Closing Date (as hereinafter defined) with respect to such Items. Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that there may be incorporated in each Item of Equipment described in Schedule A hereto a limited number of used components which will be remanufactured by the Manufacturer and will be the equivalent of new components; provided that the Manufacturers agree that the cost of any used materials, parts or components used in constructing any Item of Equipment shall not exceed 20% of the cost of all materials, parts or components used in constructing such Item of Equipment.

SECTION 2. DELIVERY.

2.1. Each Manufacturer will deliver the various Items of Equipment to be manufactured by it to the Vendee in accordance with the applicable delivery schedule set forth in said Schedules A, B and C; provided, however, that delivery of any Item of Equipment shall not be made except concurrently with the settlement therefor on a Closing Date pursuant to Section 3 hereof; provided further, that the Manufacturers shall have no obligation to deliver any Item of Equipment hereunder subsequent to the filing by or against the Lessee of a petition for reorganization under Section 77 of the Bankruptcy Act.

2.2. Each Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

2.3. Notwithstanding the foregoing provisions of this Agreement, the Vendee shall not be obligated hereunder to accept and pay for any Item of Equipment not delivered and accepted on or before the outside delivery date provided therefor in Schedules A, B and C, respectively. Any Item of Equipment not so delivered and accepted shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Manufacturer of such excluded Item of Equipment and the Vendee shall execute an agreement supplemental hereto

limiting this Agreement to the Items of Equipment not excluded herefrom and such Manufacturer agrees to look solely to the obligations of the Lessee pursuant to Section 1.2 of the Lease in respect of such excluded Item of Equipment.

2.4. The Equipment during construction shall be subject to inspection by an inspector or other authorized representative of the Lessee and the Vendee. Upon completion of a Group (as defined in Section 3.2 hereof) of Items of Equipment, such Group shall be presented on the Closing Date therefor to an inspector of the Lessee for inspection at the place specified for delivery of such Group. Acceptance of any Items of Equipment by the Lessee under the Lease on the Closing Date therefor shall be deemed to be acceptance of such Items of Equipment by the Vendee, and the Vendee agrees to use its best efforts to cause the Lessee to furnish the Certificate or Certificates of Acceptance under the Lease to the Manufacturers in such number of counterparts as may be reasonably requested. Any Item of Equipment which is not accepted by the Lessee in accordance with the provisions hereof shall be excluded from this Agreement and shall not be included in the term Equipment as used in this Agreement.

2.5. The Manufacturer of each Item of Equipment shall bear the risk of loss thereof or damage thereto until delivery and acceptance thereof pursuant to Section 2.4 hereof. Upon delivery and acceptance of each such Item of Equipment pursuant to Section 2.4 hereof, the Vendee shall bear the risk of loss of or damage to such Items.

SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The base price per Item of Equipment, which shall include prepaid freight charges, if any, to St. Louis, Missouri, and storage charges, if any, prior to delivery, but exclusive of interest and all other charges, is as set forth in Schedules A, B and C. Such base price per Item of Equipment shall be subject to increase or decrease as set forth in an invoice from the Manufacturer to the Vendee accompanied by or having endorsed thereon a certification by the Lessee as to the correctness of the price of such Item as set forth in said invoice, and the term "Purchase Price" as used herein shall mean such base price as so increased or decreased; provided that the Purchase Price for any Item of Equipment shall not exceed the Maximum Purchase Price provided therefor in such Schedules A, B and C. If on any Closing Date (as defined in Section 3.5 hereof) the Purchase Price of any Item of Equipment for which settlement is then being made under this Agreement would, but for the provisions of this sentence cause the Maximum Purchase Price for all Items of Equipment on such Schedule to be exceeded, then the Vendee will enter into an

agreement with the Manufacturer of the Item or Items of Equipment then proposed for settlement excluding from this Agreement such Item or Items of Equipment as will, after giving effect to such exclusion, reduce such aggregate Purchase Price of all Items of Equipment on such Schedule to not more than the Maximum Purchase Price provided in such Schedule, and such Manufacturer agrees to look solely to the obligation of the Lessee pursuant to Section 1.2 of the Lease in respect of such excluded Equipment.

3.2. For the purpose of making settlement for the Items of Equipment, the Items of Equipment shall be divided into two groups of Items of Equipment (each such group of Items being hereinafter called a "Group"). The first Group shall consist of all of the Items of Equipment described in Schedule B hereto plus the first four Items of Equipment described in Schedule A hereto which are delivered and accepted hereunder. The second Group shall consist of all of the Items of Equipment described in Schedule C hereto plus the remaining eleven Items of Equipment described in Schedule A hereto which are delivered and accepted hereunder.

3.3. Subject to the provisions of Section 13 hereof, the Vendee hereby acknowledges itself to be indebted to the respective Manufacturers in the amount of, and hereby promises to pay to the respective Manufacturers at such bank or trust company in the United States of America as each of the respective Manufacturers or its assignee shall designate for payment to it, the Purchase Price of the Items of Equipment as follows:

(a) On each Closing Date an amount equal to 34.221% of the aggregate Purchase Price for all Items of Equipment in the Group for which settlement is then being made; and

(b) an amount (herein sometimes called the "Conditional Sale Indebtedness") equal to the difference between the aggregate Purchase Price for all Items of Equipment in the Group for which settlement is then being made and the aggregate amount paid pursuant to subparagraph (a) of this Section 3.3 plus interest on the unpaid balance thereof payable in installments, as follows:

(1) With respect to a portion of the Conditional Sale Indebtedness equal to 5.8674% of the aggregate Purchase Price of the Equipment, payment shall be made as follows:

(A) An installment of interest accrued on the unpaid balance of such portion of the Conditional Sale Indebtedness at a rate equal to 8% per annum, payable on January 31, 1977, followed by

(B) Three (3) substantially equal installments, including both principal and interest at the rate of 8% per annum, payable on July 31, 1977, January 31, 1978 and July 31, 1978 such installments in the aggregate to be in amounts sufficient to amortize fully such portion of the Conditional Sale Indebtedness; and

(2) With respect to a portion of the Conditional Sale Indebtedness equal to 19.6560% of the aggregate Purchase Price of the Equipment, payment shall be made as follows:

(A) An installment of interest accrued on the unpaid balance of such portion of the Conditional Sale Indebtedness at a rate equal to 8-1/2% per annum, payable on January 31, 1977, followed by

(B) Three (3) installments of interest only at the rate of 8-1/2% per annum, payable on July 31, 1977, January 31, 1978 and July 31, 1978, followed by

(C) Eight (8) substantially equal installments, including both principal and interest at the rate of 8-1/2% per annum, payable on January 31, 1979 and on the 31st day of each July and January thereafter to and including July 31, 1982 such installments in the aggregate to be in amounts sufficient to amortize fully such portion of the Conditional Sale Indebtedness; and

(3) With respect to a portion of the Conditional Sale Indebtedness equal to 40.2556% of the aggregate Purchase Price of the Equipment, payment shall be made as follows:

(A) An installment of interest accrued on the unpaid balance of such portion of the Conditional Sale Indebtedness at a rate equal to 7 1/2% per annum, payable on January 31, 1977, followed by

(B) Eleven (11) installments of interest only at the rate of 9% per annum, payable on July 31, 1977 and on the 31st day of each January and July thereafter to and including July 31, 1982, followed by

(C) Twenty-two (22) installments, including both principal and interest at the rate of 9% per annum, payable on January 31, 1983 and on the 31st day of each July and January thereafter to and including July 31, 1993 in the manner set forth in Schedule D hereto.

3.4. The obligation of the Vendee to pay the amount specified in Section 3.3 hereof is, for each Group of Equipment, subject to the fulfillment on or before the delivery and acceptance of any Item of Equipment included in such Group of the following conditions (any of which may be waived by the Vendee and the payment by the Vendee of the amount specified in clause (a) of Section 3.3 with respect to such Group shall be conclusive evidence that such condition has been fulfilled or irrevocably waived as a condition of closing):

(a) The Assignee shall pay or cause to be paid concurrently with payment by the Vendee to the Manufacturers the amount contemplated by Section 5 of the Assignment.

(b) No Event of Default specified in the Lease or herein or any event which with the lapse of time and/or notice provided for in the Lease or herein would constitute such an Event of Default, shall have occurred and be continuing, and a certificate of a Vice President of the Lessee dated such Closing Date shall be delivered to the Vendee to such effect and to the effect that the representations and warranties made by the Lessee in the Lease and the Finance Agreement remain true and correct.

(c) The Vendee shall have received the following opinions, each addressed to and in scope and substance satisfactory to the Vendee, namely:

(1) The opinion of counsel for the Lessee referred to in Section 18 of the Lease; and

(2) The opinions of counsel for each Manufacturer, dated the Closing Date, referred to in subparagraph (f) of Section 5 of the Assignment.

In giving the opinions specified above, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditor's and lessor's rights generally.

(d) The Vendee shall have received the following additional instruments, each in scope and substance satisfactory to the Vendee, namely:

(1) Bills of Sale from each Manufacturer to the Assignee transferring to the Assignee security title to the Items of Equipment in the Group settled for with the Manufacturer on the Closing Date and warranting to the Assignee and to the Vendee that at the time of delivery of such Items to the Vendee under this Agreement such Manufacturer had legal title to such Items and good and lawful right to sell such Items and title to such Items was free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under this Agreement and the rights of the Lessee under the Lease;

(2) Certificates of Acceptance dated the Closing Date signed by an authorized representative of the Lessee of the character described in Section 1 of the Lease with respect to each such Item of Equipment (which shall constitute acceptance by the Vendee of each such Item of Equipment in accordance with Section 2.4 hereof); and

(3) Invoices for such Items of Equipment accompanied by or having endorsed thereon a certification by the Lessee as to the correctness of the price of such Items as set forth therein.

3.5. The term "Closing Date" with respect to each Group shall mean such date which is not more than 15 business days following presentation by the Manufacturers to the Lessee and the Vendee of the invoice or invoices with respect to such Group, as shall be fixed by the Lessee by written or telegraphic notice delivered to the Manufacturers and the Assignee at least five business days prior to the Closing Date designated therein.

3.6. The term "business day" as used herein means any day other than a Saturday, Sunday or other day on which banks in the States of Illinois, Michigan, Missouri or California are authorized or required to close. If any date on which a payment is to be made hereunder is not a business day, the amount otherwise payable on such date shall be payable on the next succeeding business day, and no interest on such amount shall accrue for the period from and after the nominal date for payment thereof to such next succeeding business day.

3.7. Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

3.8. The Vendee will pay interest at the rate of 10% per annum upon all unpaid balances of indebtedness and (to the extent legally enforceable) upon interest, after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

3.9. All payments provided for in this Agreement shall be made by the Vendee in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

3.10. Except as provided in Section 6.1 hereof the Vendee shall not have the privilege of prepaying any installment of the indebtedness prior to the date it becomes due hereunder.

SECTION 4. TITLE TO THE EQUIPMENT.

4.1. Each Manufacturer shall and hereby does retain the full security title to and property in the Equipment built by it until the Vendee shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee or the Lessee as herein provided. Any and all additions to the Equipment (not including, however, except as provided below in this parenthetical, any parts installed on and additions to any Item of Equipment, any portion of whose cost is furnished by the Lessee and which are readily removable without causing material damage to such Item of Equipment, but including parts installed on and replacements made to any Item of Equipment pursuant to the Lessee's obligations in Section 7 of the Lease to comply with all laws, regulations, requirements and rules applicable to the use, maintenance and operation of the Equipment or which constitute ordinary maintenance and repairs made by the Lessee pursuant to Section 8 of the Lease) and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

4.2. When and only when each Manufacturer shall have been paid the full indebtedness in respect of the Purchase Price of any Item of Equipment built by it, together with interest and all other payments as herein provided and all the Vendee's other obligations herein contained shall have been performed, absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Vendee without further transfer or action on the part of such Manufacturer, except that each Manufacturer, if requested by the Vendee so to do, will execute a bill or bills of sale of such Equipment releasing its security title thereto and property therein to the Vendee or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale

to the Vendee at its address specified in Section 20 hereof, and will execute in the same manner and deliver at the same place, for filing, registering, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to such Equipment, and will pay to the Vendee any money paid to such Manufacturers, pursuant to Section 6 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand by the Vendee.

SECTION 5. MARKING OF EQUIPMENT.

The Vendee will use its best efforts to cause the Lessee to keep each Item of Equipment marked as contemplated by Section 4 of the Lease.

SECTION 6. CASUALTY OCCURRENCES.

6.1. In the event that any Item of Equipment (i) shall be or become lost, stolen, destroyed or, in the opinion of the Lessee pursuant to Section 11.2 of the Lease, irreparably damaged or permanently rendered unfit for use from any cause whatsoever, or (ii) shall be requisitioned or taken by any governmental authority in the United States (other than the United States of America or any agency thereof) by condemnation or otherwise for an indefinite term or for a stated term which exceeds one year, but in either such case only after the Lessee is in fact denied the use and possession of such Item of Equipment for a period exceeding one year, or (iii) shall be requisitioned or taken by any foreign governmental authority by condemnation or otherwise for an indefinite term or for a stated term of more than one year but in either such case only after the Lessee is in fact denied the use and possession of such Item of Equipment for a period of more than one year, or (iv) shall be requisitioned or taken by any governmental authority in the United States (including the United States of America or any agency thereof) or any foreign governmental authority and a sale, exchange or other disposition (within the meaning of the Internal Revenue Code of 1954, as amended) shall occur as a result thereof (any such occurrence being hereinafter referred to as a "Casualty Occurrence"), the Vendee shall promptly and fully, after it has actual knowledge thereof, inform the Manufacturer in regard thereto. When any Item of Equipment suffers a Casualty Occurrence the Vendee, on the date of payment of the next succeeding installment of principal and/or interest on the Conditional Sale Indebtedness, shall pay to the Manufacturer the Casualty Payment (as defined in Section 6.4 hereof) of such Item as

of the date of such payment. Each such payment shall be accompanied by notification from the Vendee identifying the amount thereof and stating that said payment constitutes a Casualty Payment. Promptly following such payment, the Vendee will furnish to the Assignee, the Trustor and the Lessee a revised schedule of payments of principal and interest thereafter to be made hereunder in such number of counterparts as any such party may reasonably request.

6.2. The Manufacturer, shall, immediately upon receipt thereof, apply the money deposited pursuant to Section 6.1 to the prepayment of that portion of the Conditional Sale Indebtedness in respect of the Purchase Price of any Items of Equipment having suffered a Casualty Occurrence, plus interest then accrued on the portion thereof so prepaid, but without premium. The semiannual payments of installments of principal of and interest on the Conditional Sale Indebtedness relating to the remaining Equipment and interest thereon becoming due thereafter shall be redetermined on the basis of the amount of such Conditional Sale Indebtedness remaining unpaid and on the basis of the number of semi-annual payments remaining immediately after such application.

6.3. Upon payment to the Manufacturer of the Casualty Payment in respect of an Item of Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such Item shall automatically pass to and vest in the Vendee without further transfer or action on the part of the Manufacturer thereof. The Manufacturer, if requested by the Vendee, will execute and deliver to the Vendee, at its address specified in Section 20 hereof, at the expense of the Vendee, appropriate instruments confirming such release to the Vendee of security title to and property in such Item, free of all liens and encumbrances created or retained hereby, in recordable form in order that the Vendee may make clear upon the public records the title of the Vendee to such Item.

6.4. The Casualty Payment in respect of each Item of Equipment having suffered a Casualty Occurrence shall be deemed to be that portion of the Conditional Sale Indebtedness related to such Item remaining unpaid on the date as of which such Casualty Payment shall be determined, plus interest accrued thereon but unpaid as of such date.

6.5. In the event that prior to the expiration of the Primary Term of the Lease (as defined therein), the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period ending on or before said date, the Vendee's duty to pay the indebtedness in respect of the purchase price thereof shall continue for the duration of such requisitioning or taking. The Vendee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

SECTION 7. INSPECTIONS.

The Manufacturers shall have the right, by their agents, to inspect the Equipment and records of the Vendee with respect thereto once in every year.

SECTION 8. POSSESSION AND USE.

8.1. The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturers to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

8.2. The Vendee may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, Section 17 of the Lease, and it is hereby acknowledged and agreed that the rights of the Manufacturers under this Agreement are subject to the right, title and interest of the Lessee as lessee under the Lease. The Lease shall not be amended nor terminated without the prior written consent of the Manufacturers, which shall not be unreasonably withheld.

SECTION 9. PROHIBITION AGAINST LIENS.

9.1. The Vendee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Vendee or its successors or assigns (other than the Lessee or its assigns) which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the security title of the Manufacturer thereof, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of such Manufacturer, adversely affect the property or rights of such Manufacturer hereunder.

9.2. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called "permitted liens").

SECTION 10. INDEMNITIES.

10.1. The Vendee shall cause the Lessee to assume all risk and expense arising from the possession, use, operation and maintenance by whomsoever of the Equipment.

10.2. Except to the extent provided in Section 2.5 hereof, the Vendee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Item or of all the Equipment.

10.3. Each Manufacturer for itself warrants that the Items of Equipment to be built by it will be built in accordance with the Specifications therefor and warrants that such Items of Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Lessee and not manufactured by the Manufacturer, in which case the Manufacturer will assign all guarantees, if any, or warranties, as received by it from the manufacturer of the specialty) or workmanship under normal use and service, each Manufacturer's obligation under this Section being limited to making good at its plant any part or parts of any such Item of Equipment which shall, within two years after the delivery of such Item of Equipment to the Vendee or before such Item of Equipment has been in scheduled service 250,000 miles, whichever event shall first occur, be returned to the Manufacturer thereof with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty shall not apply to (i) any components which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of any such Item of Equipment or (ii) any such Item of Equipment which has been subject to misuse, negligence or accident. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE MANUFACTURERS, EXCEPT FOR THEIR OBLIGATIONS HEREUNDER AS LIMITED HEREBY, AND NEITHER MANUFACTURER ASSUMES OR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT AS AFORESAID. IN NO EVENT SHALL THE MANUFACTURERS BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR COMMERCIAL LOSS. Each Manufacturer reserves the right to make changes in the design of, or add any improvements to, any Items of Equipment to be built by it at any time with the approval of the Lessee without incurring any obligation to make similar changes or additions in respect of other Items of Equipment previously delivered to the Lessee. Each Manufacturer further agrees with the Vendee that acceptance of any Items of Equipment under Section 2.4 hereof shall not be deemed a waiver by the Vendee of any of its rights under this Section 10.3.

10.4. It is hereby agreed that the Lessee shall be and is hereby constituted a third party beneficiary to each of the covenants and agreements of the Manufacturers expressed in this Section 10.

SECTION 11. PATENT INDEMNITIES.

11.1. Except in cases of designs specified by the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Lessee and not manufactured by the Manufacturer, each Manufacturer agrees for itself to indemnify, protect and hold harmless the Vendee and the Lessee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee or the Lessee because of the use in or about the construction or operation of any Item of Equipment to be built by it, of any design, article or material which infringes or is claimed to infringe on or which is claimed to constitute contributory infringement with respect to any patent or other right. In case any Item of Equipment is held to constitute infringement of any patent or other similar right in respect of which liability may be charged against such Manufacturer, and the use of any Item of Equipment is enjoined, such Manufacturer shall, at its own expense and at its option, either procure for the Vendee and the Lessee the right to continue using such Item of Equipment or replace the same, within six months of such injunction, with non-infringing equipment acceptable to the Vendee and the Lessee, or modify it so it becomes non-infringing, or remove the infringing portion of the Item of Equipment and refund the purchase price and the transportation and installation costs of such portion, but in each case without impairing the operational capacity of such Item of Equipment. Without intending any limitation of the foregoing, each Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Vendee every claim, right and cause of action which such Manufacturer has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by such Manufacturer for use in or about the construction or operation of the Items of Equipment to be built by it on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and each Manufacturer further agrees to execute and deliver to the Vendee all and every such further assurance as may be reasonably requested by the Vendee, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. Each Manufacturer will give notice to the Vendee and the Lessee of any claim known to such Manufacturer from which liability may be charged against the Vendee or the Lessee hereunder and the Vendee will give notice to each Manufacturer of any claim known to it from which liability may be charged against such Manufacturer hereunder.

11.2. The term "design" wherever used in this Agreement or in any assignment of this Agreement shall be deemed to include formulae, systems, processes and combinations.

11.3. The obligations and liabilities of the Manufacturers under this Section shall apply only to Equipment located and used in the continental United States, Canada and Mexico.

11.4. It is hereby agreed that the Lessee shall be and is hereby constituted a third party beneficiary to each of the covenants and agreements of the Manufacturers expressed in this Section 11.

SECTION 12. ASSIGNMENTS.

12.1. The Vendee will not, except as otherwise provided in the Trust Agreement, sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Section 8.2 hereof, transfer the right to possession of any Item of Equipment without first obtaining the written consent of the Manufacturers, which consent shall not be unreasonably withheld. No such sale, assignment or transfer shall subject the Manufacturers to any duties, obligations or liabilities whatsoever.

12.2. All or any of the rights, benefits and advantages of each Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by such Manufacturer and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve such Manufacturer from, any of the obligations of such Manufacturer to construct and to deliver the Equipment in accordance with the provisions hereof or to respond to its guaranties, warranties and agreements contained herein, or relieve the Vendee of its obligations to the Manufacturers hereunder except as provided in Section 12.3 hereof.

12.3. Upon any such assignment the assignor shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the assigning Manufacturer's right, security title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

12.4. The Vendee recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some or all of the rights of the Manufacturers hereunder, is contemplated in accordance with the introductory clauses to this Agreement. The Vendee expressly represents, for the purpose of assurance to the Assignee and to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Manufacturers hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Manufacturers as hereinbefore provided the rights of the Assignee and any other such assignee to the entire unpaid Conditional Sale Indebtedness or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of either Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by either Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Manufacturers.

12.5. In the event of any such assignment or successive assignments by the Manufacturers of security title to the Equipment and of the Manufacturers' rights hereunder with respect thereto, the Vendee will, whenever requested by the Assignee or any other such assignee, change the identification to be marked on each side of each Item of Equipment or, in the event such Item shall then be leased to the Lessee, the Vendee will use its best efforts to cause the Lessee pursuant to Section 4 of the Lease to change the identification to be marked on each side of such Item, so as to indicate the security title of such assignee to the Equipment with such identification as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such identification for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such identification with respect to the first assignee of this Agreement, (or to a successor agent or trustee in case the first assignee is an agent or trustee) and with respect to the Vendee shall be borne by the Manufacturers. The cost of marking such identification in connection with any subsequent assignment (other than to a successor agent or trustee if the first assignee is an agent or trustee) will be borne by the subsequent assignee.

12.6. In the event of any such assignment to the Assignee prior to the completion of delivery of the Equipment, the Vendee will, in connection with settlement for any Group of Equipment subsequent to such assignment, deliver to the Assignee, at the time of delivery by the Lessee of notice fixing the Closing Date with respect to such Group, all documents reasonably required by the terms of the Assignment to be delivered by the Vendee to the Assignee in connection with such settlement, in such number of counterparts as may reasonably be requested.

12.7. If this Agreement shall have been assigned by any of the Manufacturers or all of the Manufacturers (hereinafter severally called the "Assigning Manufacturer"), and the assignee shall not make payment to the Assigning Manufacturer on the Closing Date with respect to a Group of Equipment for Items of Equipment designated herein as included in such group which were manufactured by such Assigning Manufacturer of an amount equal to that portion of the Purchase Price of such Items of Equipment included in such Group as provided in the instrument of assignment, such Assigning Manufacturer will promptly notify the Vendee and the Lessee of such event and such Items of Equipment included in the Group of Equipment shall be excluded from this Agreement thereupon.

SECTION 13. LIMITATION OF VENDEE'S OBLIGATIONS.

13.1. It is expressly understood and agreed by and between the Vendee and the Manufacturers and their respective successors and assigns that this Agreement is executed by Trust Company for USL, Inc., not individually or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee (and Trust Company for USL, Inc. hereby warrants that it possesses full power and authority to enter into and perform this Agreement), that each and all of the representations, undertakings and agreements herein made on the part of the Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Vendee or the Trustor, or for the purpose or with the intention of binding the Vendee or the Trustor personally, but are made and intended for the purpose of binding only the Trust Estate as defined in the Trust Agreement, that this Agreement is executed and delivered by the Vendee solely in the exercise of the powers expressly conferred upon the Vendee as trustee under the Trust Agreement, that actions to be taken by the Vendee pursuant to its obligations hereunder may, in certain instances, be taken by the Vendee only upon specific authority of the Trustor, that nothing herein contained shall be construed as creating any liability on

Trust Company for USL, Inc., or on the Trustor individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of, Trust Company for USL, Inc. or the Trustor, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Manufacturers and by each and every person now or hereafter claiming by, through or under the Manufacturers, and that so far as Trust Company for USL, Inc. or the Trustor or the Manufacturers, individually or personally are concerned, the Manufacturers and any person claiming by, through or under the Manufacturers shall look solely to the Trust Estate as defined in the Trust Agreement for payment of the Conditional Sale Indebtedness, together with interest thereon and all other payments and obligations as herein provided. Nothing in this Section 13 shall limit any rights of the Manufacturers under this Agreement against the Lessee. The term "Vendee" as used in this Agreement shall include any trustee succeeding the Vendee as trustee under the Trust Agreement or the Trustor if the trust created thereby is revoked. Nothing contained in this Agreement shall restrict the operation of the provisions of the Trust Agreement with respect to its revocation or the resignation or removal of the Trustee thereunder.

13.2. Without limiting the effect of Section 13.1 hereof, the Vendee shall be liable in respect of, and shall be obligated to pay, the Conditional Sale Indebtedness, interest thereon and any other expenses or liabilities of the Manufacturers herein undertaken to be paid by the Vendee only to the extent the Vendee has indefeasibly received equivalent amounts from the Lessee under the Lease, other than (i) amounts distributed by the Vendee to the Trustor while, to the actual knowledge of the Vendee, no Event of Default hereunder was continuing, (ii) amounts paid to the Vendee or the Trustor pursuant to the Tax Indemnity Agreement dated as of the date hereof among the Vendee, the Trustor and the Lessee, and (iii) amounts payable to the Vendee or the Trustor pursuant to Section 6 of the Lease.

13.3. Without limiting the effect of Section 13.1 hereof, the obligations of the Vendee under Sections 2.4, 5, 6.1, 9.1, 10.1, 12.5, 16.2, 16.7 and 19 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such undertakings, but if the same shall not be performed they shall constitute the basis for an Event of Default hereunder pursuant to Section 15 hereof.

SECTION 14. APPLICATION OF PROVISIONS OF SECTION 15, "DEFAULTS", AND SECTION 16, "REMEDIES".

It is contemplated that each Manufacturer will, coincidentally with the execution and delivery of this Agreement, assign certain of its rights under this Agreement, and all its respective right, security title and interest in and to the Equipment to a single assignee. It is desired by the parties hereto that such single assignee should upon such assignment be entitled to enforce any remedies in case of default by the Vendee in respect of its obligations under this Agreement with any of the Manufacturers as if such breach were a default in respect of the Vendee's obligations under this Agreement with each of the Manufacturers. Accordingly, on the assumption that such assignments to a single assignee will be made by each Manufacturer, the defaults and the remedies therefor as set forth in Sections 15 and 16 hereof are set forth as if there were but a single Manufacturer.

SECTION 15. DEFAULTS.

15.1. In the event that any one or more of the following Events of Default shall occur and be continuing, to-wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder and such default shall continue for five days; or

(b) The Vendee shall make or permit any unauthorized assignment or transfer of this Agreement, or of possession of any Item of the Equipment, or any portion thereof, or

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Vendee contained herein and such default shall continue for 30 days after written notice from the Manufacturer specifying the default and demanding the same to be remedied; or

(d) Any proceedings shall be commenced by or against the Vendee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which

does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Vendee under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Vendee or for the property of the Vendee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) An Event of Default shall have occurred and be continuing under the Lease;

then at any time after the occurrence and during the continuance of such an Event of Default the Manufacturer may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, but without prejudice to any rights of the Vendee under the Lease with respect to any default thereunder, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 10% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled, subject to the provisions and limitations of Section 13 hereof, to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the provisions and limitations of Section 13 hereof.

15.2. In addition to the right of the Vendee to elect to cure a default hereunder as provided in Section 15.4 hereof, and notwithstanding the rights of the Manufacturer otherwise expressed in Section 15.1 hereof, in the case of any Event of Default under the Lease which can be cured by the payment of money, the Manufacturer may not (so long as the Vendee and/or the Trustor shall retain any cure right under the next following sentence), without the prior written consent of the Vendee and the Trustor, exercise any of the rights or remedies provided herein or in the Lease

during a 30-day period following the giving of written notice of such Event of Default by the Manufacturer to the Vendee. During such 30-day period the Vendee and/or the Trustor shall have the right to cure such Event of Default on behalf of the Lessee; provided that such right to cure such Event of Default shall be limited to not more than two such consecutive Events of Default; provided further, that in the event the Lessee shall have reimbursed the Vendee and/or the Trustor within fifteen days of the exercise of such right to cure by the Vendee and/or the Trustor, then for the purpose of the preceding proviso, such cure right shall not be deemed to have been exercised. No party exercising the right to cure an Event of Default pursuant to this Section 15.2 shall obtain any lien, charge or encumbrance of any kind on any Item of Equipment or any rentals or other amounts payable therefor under the Lease in respect of any sums paid or expenses incurred in connection with the exercise of such right or the curing of such Event of Default, nor shall the right of such party to reimbursement from the Lessee or any other party for the repayment of such sums so advanced or expenses so incurred impair the prior right of the Manufacturer to the sums payable by the Lessee under the Lease.

15.3. The Manufacturer may waive any Event of Default hereunder and its consequences and rescind and annul any such declaration by notice to the Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

15.4. Any default hereunder shall be deemed cured and not continuing if the Vendee, prior to any sale by the Manufacturer of the Equipment as provided in Section 16.3, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement.

SECTION 16. REMEDIES.

16.1. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such Event of Default,

the Manufacturer may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any Item thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 16 expressly provided, and may remove the same from possession and use of the Vendee and for such purpose may enter upon the premises of the Vendee or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Lessee, with or without process of law.

16.2. In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Lessee for the delivery of the Equipment to the Manufacturer, the Vendee shall use its best efforts to cause the Lessee, at the expense of the Lessee, forthwith and in the usual manner to cause the Equipment to be moved to such point or points as shall be reasonably designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

16.3. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such Event of Default and after the entire unpaid balance of the Conditional Sale Indebtedness shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession or either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first

given notice of such sale in accordance with the provisions of Section 16.4 hereof, and any other notice which may be required by law, sell and dispose of the Equipment, or any part thereof, at public auction to the highest bidder or at private sale, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Manufacturer may determine and at such place or places as the Manufacturer may designate pursuant to Section 16.4 hereof (whether or not it be the location of the Equipment or any part thereof). Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice.

16.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale of the property to be sold, and in general in such manner as the Manufacturer may determine, provided that the Vendee shall be given written notice of such sale not less than fifteen business days prior thereto, by mail addressed as provided herein and provided further that such sale shall be conducted in a commercially reasonable manner. If such sale shall be a private sale, it shall be subject to the rights of the Vendee to purchase or provide a purchaser, within fifteen business days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Manufacturer may bid for and become the purchaser of the Equipment, or any Item thereof, so offered for sale without accountability to the Vendee (except to the extent of surplus money received as hereinafter provided in this Section), and in payment of the purchase price therefor the Manufacturer shall be entitled to have credited on account thereof all sums due to the Manufacturer from the Vendee hereunder.

16.5. Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer; provided that the Manufacturer agrees that it

will not retain the Equipment in satisfaction of the Conditional Sale Indebtedness. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

16.6. All sums of money realized by the Manufacturer under the remedies herein provided shall be applied, first to the payment of costs and expenses of suit, if any, and of such sale and of all proper expenses, liabilities and advances, including legal expenses and fees of outside counsel incurred or made by the Manufacturer (but only to the extent such costs, expenses, liabilities and advances have not been otherwise paid by the Lessee), second to the payment of interest on the indebtedness in respect of the Purchase Price of the Equipment accrued and unpaid and third to the payment of the indebtedness in respect of the Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Manufacturer, there shall remain any amount due to it under the provisions of this Agreement, the Manufacturer may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee, subject to the provisions of Section 13 hereof. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Vendee.

16.7. The Vendee, subject to the provisions of Section 13 hereof, will pay all reasonable expenses, including fees of outside counsel, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including fees of outside counsel and the amount thereof shall be included in such judgment.

16.8. The foregoing provisions of this Section are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto. No remedies herein provided shall be exercised in such manner as to violate any rights of the Lessee under the Lease unless an Event of Default shall have occurred and be continuing under the Lease.

SECTION 17. APPLICABLE STATE LAWS.

17.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

17.2. Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any Item thereof, and any other requirements as to the time, place and terms of sale thereof, and other requirements with respect to the enforcement of the Manufacturers' rights hereunder and any and all rights of redemption.

17.3. Nothing in this Section 17 or any other provision of this Agreement shall be deemed to make ineffective, or to modify or waive, the provisions and limitations of Section 13 hereof.

SECTION 18. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturers shall impair or affect the Manufacturers' rights thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Manufacturers' rights or the obligations of the Vendee hereunder. The Manufacturers' acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Manufacturers' rights hereunder with respect to any subsequent payments or defaults therein.

SECTION 19. RECORDING.

The Vendee will cause this Agreement, the first assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited, if

necessary, with the Interstate Commerce Commission, and otherwise as may be required by law or reasonably requested by the Manufacturers for the purpose of proper protection, to the satisfaction of counsel for the Manufacturers, of their security title to the Equipment and their rights under this Agreement or for the purpose of carrying out the intention of this Agreement.

SECTION 20. NOTICE.

Any notice required or permitted to be given by any party hereto to another shall be deemed to have been given when deposited in the United States certified mail, first class, postage prepaid, addressed as follows:

(a) to the Vendee: Trust Company for USL, Inc., as Trustee under MoPac Trust No. 3, 1211 West 22nd Street, Oak Brook, Illinois 60521, with copies of such notice to be sent to United States Leasing International, Inc., as Agent for the Trustee under MoPac Trust No. 3, 633 Battery Street, San Francisco, California 94111, Attention: Vice President-Lease Underwriting Group, and American Road Equity Corporation, The American Road, P. O. Box 1729, Dearborn, Michigan 48121, Attention: Vice President-CIR Financing,

(b) to the Lessee: Missouri Pacific Railroad Company, 210 North Thirteenth Street, St. Louis, Missouri 63103, Attention: Treasurer,

(c) to General Electric: General Electric Company, 2901 East Lake Road, Erie, Pennsylvania 16501, Attention: Locomotive Products Department,

(d) to General Motors: General Motors Corporation (Electro-Motive Division), LaGrange, Illinois 60525, and

(e) to the Assignee at P.O. Box 44018, San Francisco, California, Attention: Corporate Trust Department, or to any other assignee of the Manufacturers, or of the Vendee or the Agent, at such address as may have been furnished in writing to the Vendee or the Manufacturers, as the case may be, and to the Lessee, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

SECTION 21. HEADINGS.

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

SECTION 22. EFFECT AND MODIFICATION OF AGREEMENTS.

This Agreement and the Schedules relating hereto, together with the Lease, exclusively and completely state the rights and agreements of the Manufacturers and the Vendee with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Manufacturers and the Vendee. Without the prior written consent (which shall not be unreasonably withheld) of the Manufacturers, the Vendee will not consent to any amendment, modification, waiver or supplement to the Lease or, except in accordance with Section 14 thereof, cancel or terminate the Lease prior to the payment in full of the Conditional Sale Indebtedness, together with interest thereon and all other payments due under this Agreement.

SECTION 23. LAW GOVERNING.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

SECTION 24. DEFINITIONS.

The term "Manufacturers", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, General Electric and General Motors and any successor or successors for the time being to the manufacturing properties and business of each respectively, and, after any such assignment, any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment. The rights and undertakings of each Manufacturer hereunder are several and not joint.

SECTION 25. ASSIGNMENT OVER AND GRANT OF SECURITY INTEREST IN THE LEASE.

25.1. In order to further secure the payment of the Conditional Sale Indebtedness, the interest thereon and the payment or performance of all of the Vendee's obligations contained in this Agreement, the Vendee hereby assigns, transfers and sets over to the Manufacturers and grants the Manufacturers a security interest in all right, title, interest, claims and demands of the Vendee as lessor in, under and to the Lease, including all extensions of the term of the Lease, together with all rights, powers, privileges, options and other benefits of the Vendee as lessor under the Lease, including, without limitation, but subject to the exceptions, reservations and limitations contained in Section 25.6 below:

(a) the immediate and continuing right to receive and collect all rentals, insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable to or receivable by the lessor under the Lease pursuant thereto;

(b) following the occurrence of an Event of Default hereunder, the right to make all waivers and agreements; and

(c) the right to take such action upon the occurrence of a default or an Event of Default under the Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law, and to do any and all other things whatsoever which the Vendee or any lessor is or may be entitled to do under the Lease;

it being the intent and purpose hereof that the assignment and transfer to the Manufacturers of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and the Manufacturers shall have the right to collect and receive said rentals and other sums for application to the payment of the Conditional Sale Indebtedness to the extent of their respective interests, together with the interest thereon and the other obligations of the Vendee hereby secured at all times during the period from and after the date of this Agreement until the Conditional Sale Indebtedness, together with the interest thereon and all other obligations of the Vendee hereby secured have been fully paid and discharged.

25.2. Subject to Section 25.6 hereof, the Vendee agrees that it will not:

(a) declare a default or exercise the remedies of the lessor under, or terminate, modify or accept a surrender of, or offer or agree to any termination, modification, surrender or termination of, the Lease in respect of the Equipment (except as otherwise expressly provided herein) or by affirmative act consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the leasehold estate created by the Lease or any part thereof; or

(b) receive or collect or permit the receipt or collection of any rentals or Casualty Value payments prior to the date for the payment thereof provided for by the Lease (unless received without fault and promptly remitted to the Manufacturers) or assign, transfer or hypothecate (other than to the Manufacturers hereunder) any rentals or Casualty Value payments then due or to accrue in the future under the Lease.

25.3. The Vendee does hereby irrevocably constitute and appoint the Manufacturers its true and lawful attorneys with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rentals and other payments (except as set forth in Section 25.6 hereof) and sums which are assigned under Section 25.1 hereof and, following the occurrence of an Event of Default hereunder, full power to settle, adjust or compromise any claim thereunder as fully as the Vendee could itself do, and to endorse the name of the Vendee on all commercial paper given in payment or in part payment thereof, and in their discretion to file any claim or take any other action or proceedings, either in their own names or in the name of the Vendee or otherwise, which the Manufacturers may deem necessary or appropriate to protect and preserve the right, title and interest of the Manufacturers in and to such rentals and other payments and sums and the security intended to be afforded hereby.

25.4. This assignment being made only as security shall not subject the Manufacturers to, or transfer, or pass, or in any way affect or modify, the liability of the Vendee under the Lease, it being understood and agreed that notwithstanding this assignment, or any subsequent assignment, all obligations of the Vendee to the Lessee, as lessee under the Lease, shall be and remain enforceable by the Lessee, as lessee, its successors and assigns, against, and only against, the Vendee. Further, the Vendee covenants and agrees that it will perform all its obligations to be performed under the terms of the Lease, and hereby irrevocably authorizes and empowers the Manufacturers, in their own name, or in the name of their nominee, or in the name of the Vendee, as its attorney, on the happening of any failure by the Vendee, to perform or cause to be performed any such obligation.

25.5. Upon the full discharge and satisfaction of the full amount of the Conditional Sale Indebtedness, together with interest as herein provided and the performance of all of the Vendee's obligations herein contained, the assignment made hereby and all rights herein assigned to the Manufacturers shall cease and terminate, and all estate, right, security title and interest of the Vendee in and to the Lease shall revert to the Vendee.

25.6. There are expressly excepted and reserved from the assignment and security interest provided for in Section 25.1 above the following described properties, rights, interests and privileges:

(a) all payments of any indemnity under Section 6 of the Lease which are payable to the Vendee or the Trustor for its own account;

(b) if an Event of Default under the Lease based on a breach of any covenant of the Lessee to pay any such indemnity or payment referred to under paragraph (a) of this Section 25.6 shall occur and be continuing, the right of the Vendee to declare that an Event of Default exists under the Lease and the right of the Vendee or the Trustor to exercise the remedies, but only those remedies, provided for in Section 14.2(a) of the Lease to enforce performance by the Lessee of any covenants of the Lessee to pay any such indemnity or payment directly to the Vendee or the Trustor or to recover damages for the breach thereof; and

(c) any insurance proceeds payable under general public liability policies maintained by the Lessee pursuant to Section 11.1 of the Lease which by the terms of such policies or the terms of the Lease are payable directly to the Vendee or the Trustor for its own account.

SECTION 26. EXECUTION.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all Manufacturers so long as any counterpart which is executed by any Manufacturer is also executed by the Vendee.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or representatives, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL ELECTRIC COMPANY

(Corporate Seal)

By *Fant Smith*
Its ^{ACTING} General Manager, Locomotive
Products Department

Attest:

W. D. [Signature]
Attesting Secretary

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

(Corporate Seal)

By *P. K. Hozlman*
Its Vice President

Attest:

W. Scott
Assistant Secretary

TRUST COMPANY FOR USL, INC., as
Trustee under MoPac Trust No. 3

(Corporate Seal)

By *John H. [Signature]*
Its Vice President
Assistant Trust Officer

Attest:

Richard A. Cozmo
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF ERIE)

On this 21st day of June, 1976, before me personally appeared F. A. MITCHELL, ^{Active} to me personally known, who, being by me duly sworn, says that he is a General Manager of General Electric Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Margaret M. Frew
Notary Public

MARGARET M. FREW, NOTARY PUBLIC
ERIE, ERIE COUNTY, PENNSYLVANIA
MY COMMISSION EXPIRES JUNE 7, 1980

(Seal)

My Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 18th day of June, 1976, before me personally appeared P. K. HOGLUND, to me personally known, who being by me duly sworn, says that he is a Vice President of General Motors Corporation (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Agnes L. Napke
Notary Public

(Seal)

My Commission Expires: FEB 10 1978

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

the Assistant Trust Officer

On this 23rd day of June, 1976, before me personally appeared John D. Carroll, to me personally known, who being by me duly sworn, says that he is a ~~Vice President~~ of Trust Company for USL, Inc., as Trustee under MoPac Trust No. 3, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kathy Harris

Notary Public

(Seal)

My Commission Expires:

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES FEB 9 1980
ISSUED THRU ILLINOIS NOTARY ASSOC.

SCHEDULE A
(to Conditional Sale Agreement)

MANUFACTURER:	General Motors Corporation (Electro-Motive Division)
PLANT OF MANUFACTURER:	McCook, Illinois
DESCRIPTION OF EQUIPMENT:	15 1500 H.P. Model GP-15-1 Diesel Electric Locomotives, bearing Road Numbers MP1555 to MP1569, both inclu- sive
SPECIFICATIONS:	Manufacturer's Specification 8106-3
BASE PRICE:	\$358,577 per Item (\$5,378,655 for 15 Items)
MAXIMUM PURCHASE PRICE:	\$ <u>368,800</u> per Item
DELIVER TO:	Missouri Pacific Railroad Company
PLACE OF DELIVERY:	McCook, Illinois
ESTIMATED DELIVERY DATES:	June - July, 1976
OUTSIDE DELIVERY DATE:	September 15, 1976

Lessee: Missouri Pacific Railroad Company

Assignee of Manufacturer: Wells Fargo Bank, N.A.

SCHEDULE B
(to Conditional Sale Agreement)

MANUFACTURER:	General Electric Company
PLANT OF MANUFACTURER:	Erie, Pennsylvania
DESCRIPTION OF EQUIPMENT:	5 2250 H.P. Model U-23-B Diesel Electric Locomotives, bearing Road Numbers MP2274 to MP2278, both inclusive
SPECIFICATIONS:	Manufacturer's Specification 3530-C
BASE PRICE:	\$392,915 per Item (\$1,964,575 for 5 Items)
MAXIMUM PURCHASE PRICE:	\$ <u>394,128</u> per Item
DELIVER TO:	Missouri Pacific Railroad Company
PLACE OF DELIVERY:	Erie, Pennsylvania
ESTIMATED DELIVERY DATES:	June, 1976
OUTSIDE DELIVERY DATE:	September 15, 1976

Lessee: Missouri Pacific Railroad Company

Assignee of Manufacturer: Wells Fargo Bank, N.A.

SCHEDULE C
(to Conditional Sale Agreement)

MANUFACTURER:	General Motors Corporation (Electro-Motive Division)
PLANT OF MANUFACTURER:	McCook, Illinois
DESCRIPTION OF EQUIPMENT:	5 3000 H.P. SD-40-2 Diesel Electric Locomotives, bearing Road Numbers MP3216 to MP3220, both inclusive
SPECIFICATIONS:	Manufacturer's Specification 8087
BASE PRICE:	\$521,506 per Item (\$2,607,530 for 5 Items)
MAXIMUM PURCHASE PRICE:	\$ <u>545,000</u> per Item
DELIVER TO:	Missouri Pacific Railroad Company
PLACE OF DELIVERY:	McCook, Illinois
ESTIMATED DELIVERY DATES:	July, 1976
OUTSIDE DELIVERY DATE:	September 15, 1976

Lessee: Missouri Pacific Railroad Company

Assignee of Manufacturer: Wells Fargo Bank, N.A.

SERIES C AMORTIZATION SCHEDULE

(Payments Required per \$100,000 Conditional Sale Indebtedness
pursuant to Section 3.3(b)(3) of the Conditional Sale Agreement)

<u>Payment Number</u>	<u>Principal Balance</u>	<u>Payments of Interest</u>	<u>Allocated to Principal</u>	<u>Total Payment</u>
1	100000.00	4500.00	0.	4500.00
2	100000.00	4500.00	0.	4500.00
3	100000.00	4500.00	0.	4500.00
4	100000.00	4500.00	0.	4500.00
5	100000.00	4500.00	0.	4500.00
6	100000.00	4500.00	0.	4500.00
7	100000.00	4500.00	0.	4500.00
8	100000.00	4500.00	0.	4500.00
9	100000.00	4500.00	0.	4500.00
10	100000.00	4500.00	0.	4500.00
11	100000.00	4500.00	0.	4500.00
12	92672.63	4500.00	7327.37	11827.37
13	85015.53	4170.27	7657.10	11827.37
14	77500.07	3825.70	7515.46	11341.16
15	69646.41	3487.50	7853.66	11341.16
16	65259.13	3134.09	4387.28	7521.37
17	60674.42	2936.66	4584.71	7521.37
18	56150.32	2730.35	4524.10	7254.45
19	51422.63	2526.76	4727.69	7254.45
20	46692.68	2314.02	4729.95	7043.97
21	41749.88	2101.17	4942.80	7043.97
22	36804.72	1878.74	4945.16	6823.90
23	31637.03	1656.21	5167.69	6823.90
24	27890.32	1423.67	3746.71	5170.38
25	23975.00	1255.06	3915.32	5170.38
26	21488.44	1078.88	2486.56	3565.44
27	18889.98	966.98	2598.46	3565.44
28	16283.86	850.05	2606.12	3456.17
29	13560.48	732.77	2723.40	3456.17
30	10390.78	610.22	3169.68	3779.90
31	7078.47	467.59	3312.31	3779.90
32	3617.10	318.53	3461.37	3779.90
33	0.	162.77	3617.10	3779.90

SCHEDULE D
(to Conditional Sale Agreement)